1986-1987 ANNUAL REPORT

April 1, 1986 – March 31, 1987

Human Rights

British Columbia Council of Human Rights

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The Honourable Lyall F. Hanson
Minister of Labour and Consumer Services
Parliament Buildings
Victoria, British Columbia

Sir:

On behalf of the British Columbia Council of Human Rights, I am pleased to submit to you the Annual Report of the British Columbia Council of Human Rights for the period April 1, 1986 to March 31, 1987.

John I. D. Joe
Chairman

Chairman's Remarks

During this reporting period, the British Columbia Council of Human Rights:

1. accepted 231 complaints and conducted 50 formal hearings;
2. visited most areas of the province and spoke to 67 interested groups and held numerous workshops and seminars; and
3. added two new staff positions to assist in supervising and disclosing complaint investigations.

The Council expanded its disclosure process in order to meet the standards of natural justice and procedural fairness established by the Supreme Court of Canada in *Radulesco* v. *Canadian Human Rights Commission* (1984), and the British Columbia Supreme Court in *McIntyre v. Edgett et al.* (1986). After the investigating officer has submitted a report, the substance of the investigation is disclosed to both parties who, in turn, have an opportunity to respond.

These court decisions coupled with a mounting case load dictated that the Council add two staff positions, a Supervisor of Investigations and a Disclosure Officer.

The Council's education and public information activities increased during this period to meet public demand and interest throughout the province. Council members and staff, in addition to speaking engagements in Victoria and Vancouver, travelled throughout the province to speak to interested community groups, business associations and school classes as part of an on-going initiative to inform all British Columbians about the *Human Rights Act* and the principles upon which it is based. The Council is firmly committed to the view that equality of opportunity cannot be achieved solely by dealing with complaints on a case-by-case basis. In addition to strong and impartial enforcement of the *Human Rights Act*, an effective human rights information and education program is essential if attitudes are to be changed and discrimination eradicated.

The continuing success of the human rights program is attributed to the commitment and dedication of the Council Members, staff and other concerned persons throughout the province.

Structure and Mandate of the British Columbia Council of Human Rights

The *Human Rights Act* was proclaimed on September 14, 1984. The legislation protects the fundamental rights of British Columbians by prohibiting discrimination on the basis of race, colour, ancestry, place of origin, political belief, religious belief, marital status, physical or mental disability, sex, age or criminal or summary conviction. The complete text of the *Human Rights Act* is found in Appendix B.

The British Columbia Council of Human Rights consists of five members appointed by the Lieutenant-Governor in Council: Chairman James R. Edgett; members John I. D. Joe, Eric D. Powell, Natexa Verbrugge and Douglas Wilson. The members were each appointed to a three year term effective July 20, 1984.

The five member Council is responsible for administering the *Human Rights Act*. Their mandate includes receiving, investigating and adjudicating complaints alleging discrimination contrary to the legislation. The Council is also authorized by the *Human Rights Act* to approve special programs to assist disadvantaged groups. (All services provided by the Council are available to the public without charge.)

Enforcement of the *Human Rights Act*

The *Human Rights Act* prohibits discrimination on a number of grounds, as noted above. Discrimination is prohibited in the areas of publication, public facilities, the purchase of property, tenancy, employment advertisements, wages, employment and unions and professional associations. The Council's jurisdiction extends to all matters that fall within the constitutional authority of the provincial Legislature.

Complaints against federally regulated agencies such as airlines, railways and the Federal government fall under the jurisdiction of the Canadian Human Rights Commission.

Filing a Complaint

Persons who believe they have been discriminated against contrary to the *Human Rights Act* are encouraged to contact the nearest office of the British Columbia Council of Human Rights or the Employment Standards Branch of the Ministry of Labour and Consumer Services and complete a Complaint Information Form. The addresses of these offices are found on page 8. Once this Form or a letter is received, a Complaints Analyst will contact the Complainant for additional information required for preparing intake documents which list the allegations. Three Council members then review the intake documents to determine if the complaint should proceed to investigation. The panel of three Council Members may decide that a complaint should not proceed to investigation if it:

- is not within the jurisdiction of the Council;
- could be more appropriately dealt with under another Act;
- is trivial, frivolous, vexatious or made in bad faith; or
- is based on facts that occurred more than six months before the complaint was filed, unless the delay was incurred in good faith and no substantial prejudice would result to any person affected by the delay.

Investigation Procedure

Once the panel of three Council Members accepts the complaint for investigation, it is assigned to an Industrial Relations Officer (IRO) in the region where the alleged incident(s) occurred. The IRO gathers information from all parties and witnesses and writes a report for the panel. The investigation is an impartial, fact-finding exercise and is supervised by the Council's Supervisor of Investigations. Once the IRO has submitted the investigative report, a summary is prepared and sent to the parties who have 30 days to respond with corrections or new information. If either of the parties provides new substantive information, this will also be disclosed.

Following the disclosure period, the panel of three Council members makes a decision pursuant to section 14 (1) of the *Human Rights Act*. The panel can:

- order the proceedings be discontinued;
- recommend a settlement of the complaint and, where the recommendation is not accepted by the complainant or the person alleged to have contravened the *Human Rights Act*, submit a report to the Minister;
- submit a report to the Minister; or
- designate one member of the Council to hold a hearing.

If the complaint is upheld at a hearing, which is a formal public proceeding, persons who are found to have contravened the Act are ordered to cease and desist the discriminatory practice and may be ordered to pay compensation for wages or salary lost or expenses incurred by the person discriminated against and, in addition, to pay the person discriminated against an amount not exceeding $2,000.00. Moreover, the person who was found to have contravened the Act may be ordered to make available to the person discriminated against the right, opportunity or privilege that was denied.

Disposition of Complaints

During this reporting period, 85 complaints were resolved; 21 were discontinued; 16 were designated to hearings; and, at March 31, 1987, 269 complaints were under investigation.

A full report of cases received and their disposition can be found in Appendix A.

Hearings

Fifty hearings were held during this reporting period and 44 hearing files were closed as follows:

12 Parties settled before or during the hearing

8 Complainants did not wish to pursue the complaint

10 The complaint was found to be not justified

14 The complaint was found to be justified and an Order was made in favour of the Complainant.

In all, twenty four hearing decisions were handed down during this reporting period. Although the Council's adjudicative role is unique in Canada, it is of interest to note that eighteen decisions were handed down by Ontario boards of inquiry, three by Alberta, four by Saskatchewan and thirteen by Federal human rights tribunals over the same period.

Special Programs

Section 19 (2) of the *Human Rights Act* gives the Council the authority to approve any program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups. All individuals, companies or groups who wish to implement a program which gives preference to such individuals or groups should contact the Council for approval. During this reporting period, the Council granted exemptions under section 19 (2) to Canadian Job Strategy and Employment Equity Programs, Vancouver Resource Society for the Physically Disabled, Youth Employment Skills of Canada, Inc., Canadian Aircraft Products Ltd., Victoria Women's Transition House, Ministry of Health — Sexually Transmitted Disease Clinic, and South Okanagan Women in Need.

Requests for Information

During this reporting period, the Council received 7,236 inquiries and provided 2,922 referrals to other agencies. In addition, the Council distributed approximately 40,000 copies of brochures and publications to individuals and groups throughout the province.

Education

Council's education program for this reporting period focussed on employers and schools. In October 1986, to complement the Council's presence at the B.C. Business Information Show in Vancouver, the Council published its second newsletter which focussed on small business. Participating in the B.C. Business Information Show allowed Council members to explain the *Human Rights Act* and

procedures directly to employers. Articles from this newsletter have been reprinted in various business organization publications including that of the Vancouver Board of Trade.

In May 1986, the Council, in response to reports of sexual harassment of female farmworkers in the Fraser Valley, met with Lower Mainland farm labour contractors to explain the Act and the prohibitions against sexual harassment. The Council translated a sexual harassment fact sheet into French, Punjabi and Cantonese and had advertisements published in various ethnic language newspapers. These advertisements explained sexual harassment and how to file a human rights complaint.

Council Members and staff also spoke to thousands of students throughout the province from the elementary level to post-secondary. Again this year, the Council sponsored a human rights poster project for elementary school classes and awarded the three best overall class submissions with a certificate and $200.00, which went to the classes for projects or supplies. The best classroom-wide submissions were from class entries from Alderson Elementary School, Coquitlam; Roy Wilcox Elementary School, Kitimat; and South Park Elementary School, Delta.

The Council also sponsored an essay contest for secondary school students. Students were asked to write an essay on any section or part of the *Canadian Charter of Rights and Freedoms* or the *Human Rights Act*. The three best essays out of 79 were written by Sean Perry, Wellington Junior Secondary School in Nanaimo; Sophia Gin, Burnaby South Senior Secondary School; and Lise Phang, Centennial School in Coquitlam. Each student received a certificate and $200.00. Council Members and staff visited the respective schools to make the awards and speak to the students about human rights.

The Council also continued to work toward publication of its human rights course material unit designed for the senior secondary level.

Speaking Engagements

Council Members and staff spoke to 67 groups throughout the Province and held numerous workshops and seminars. Some of the groups addressed by Council Members were: Multiculturalism in Canada Conference; Fraser Valley Farm Labour Contractors; United Way Referral Agents; Native Youth Job Corps; Capital Mental Health Association; the Nautley Indian Band at Fort Fraser; the Fort St. John Women's Resource Centre; Dawson Creek Native Legal Information Centre; Ford Mountain Correctional Centre; Kootenay Area Indian Council; the Kelowna Women's Resource Centre; and the Employee Relations Committee of the Lower Mainland Hospitals.

National and International Liaison

The British Columbia Council of Human Rights is a member agency of the Canadian Association of Statutory Human Rights Agencies (CASHRA). In addition, the Council participates in the Federal/Provincial/Territorial Committee of Officials Responsible for Human Rights, through Council Member Douglas J. Wilson, who is the official representative for British Columbia. This latter committee is responsible for monitoring Canada's compliance with the various international conventions to which Canada is a signatory. A working group of this committee met in Victoria on February 12 and 13, 1987, to draft a document on the future role and mandate of this important committee. Through this committee, new human rights issues are brought to the attention of official representatives and Ministers responsible for human rights. The Council has also established a working relationship with the Secretary of State offices in Victoria and Vancouver.

Legal Aid

The Council has a contract with the Legal Services Society of British Columbia to ensure that no one involved in a human rights complaint is deprived of legal counsel because of an inability to pay.

Staff of the British Columbia Council of Human Rights

The Council Members are assisted in their duties by 11 staff members (listed below) and 55 Industrial Relations Officers located throughout the province in the Employment Standards Branch offices.

Lois Akam, Manager
Alan Andison, Supervisor of Investigations
Nasim Babul, Receptionist/Secretary (Vancouver Office)
Julie Duncan, Receptionist
Rita Fayle, Office Manager
Nancetta Kobe, Case Management Clerk
Gillian MacGregor, Complaints Analyst (Vancouver Office)
Patti Steele, Complainants Analyst
Mark Tatchell, Disclosure Officer
Alison Terrico, Secretary to Council
Sheila Twilley, Case Management Clerk

VICTORIA

British Columbia Council
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1019 Wharf St.
Victoria, B.C.
V8W 2Z3

387-3710

TOLL FREE NUMBER 1-800-663-0876

VANCOUVER

British Columbia Council
of Human Rights
406, 815 Hornby St.
Vancouver, B.C.
V6Z 2E6

660-6811

EMPLOYMENT STANDARDS OFFICES

Deer Lake Centre
4946 Canada Way
Burnaby, B.C.
V5G 4J6

299-7211

45904 Victoria Ave.
Chilliwack, B.C.
V2P 2T1

795-8400

117 — 10th Ave. South
Cranbrook, B.C.
V1C 2N1

426-1291

Room 206, Court House
420 Cumberland Road
Courtenay, B.C.
V9N 2C4

334-1225

1201 — 103rd Ave.
Dawson Creek, B.C.
V1G 4J2

784-2390

220, 546 St. Paul St.
Kamloops, B.C.
V2C 5T1

828-4516

3rd Floor, 1019 Wharf St.
Victoria, B.C.
V8W 2Z3

387-1220

301, 1664 Richter St.
Kelowna, B.C.
V1Y 8N3

861-7404

204, 190 Wallace St.
Nanaimo, B.C.
V9R 5B1

755-2342

310 Ward St.
Nelson, B.C.
V1L 5S4

354-6550

3547 Skaha Lake Rd.
Penticton, B.C.
V2A 7K2

492-1333

464 Plaza 400
1011 Fourth Ave.
Prince George, B.C.
V2L 3H9

565-6120

4548 Lakelse Ave.
Terrace, B.C.
V8G 1P8

638-3272

540 Borland St.
Williams Lake, B.C.
V2G 1R8

398-4478

CASE SUMMARIES

Settlements

During the course of an investigation the parties often reach an agreement and settle the complaint. Below are examples of such settlements.

A woman alleged that her former employer paid her a wage which was less than a male co-worker received although they were doing similar or substantially similar work as counter persons. She received a settlement of $2,200.00 from her former employer.

A man's application for a permanent position with a municipal police force was rejected because he did not meet the newly revised vision standards. He alleged that this rejection constituted discrimination because of a physical disability. In settlement, the police force agreed to reconsider his application.

An Indo-Canadian woman complained that she was discriminated against by her employer because of her race, colour or place of origin when she was treated differently than the Caucasian telephone solicitors. She received $550 for expenses incurred.

A woman employed as a bartender and waitress in the north Okanagan alleged that her employer sexually harassed her and subsequently fired her. The woman, who had also filed sexual assault charges with the local R.C.M.P., accepted $4,000 as a settlement in the matter.

In another sexual harassment complaint, a female sales representative complained that her supervisor physically and verbally harassed her on several occasions. As a result of the sexual harassment her sales declined and the supervisor asked for her resignation. After an investigation, an agreement was reached which included a $2,000 payment to the Complainant.

A sales clerk in an electrical appliance store alleged that her supervisor requested that she engage in sexual intercourse with him and grabbed her physically on at least two occasions. She eventually quit her job. After an investigation, an agreement was reached which included a $2,650 payment to the Complainant.

A man seeking employment in the Okanagan objected to a newspaper employment advertisement for a cook placed by a children's camp that stated, in part, that a "Christian background would be beneficial." After receiving letters of apology from both the newspaper and the camp, the man withdrew his complaint.

A woman with a visual impairment who relies on a guide dog was refused entry into a store in Richmond. After a letter of apology from the store was published in three local newspapers, she withdrew her complaint.

Hearing Summaries

Two hearing decisions released during this reporting period established Council policies with respect to discrimination because of sex and discrimination because of physical disability. In *Stefanyshyn* v. *Four Seasons Management Ltd.*, Council Member John Joe found that the prohibition against sex discrimination includes and encompasses discrimination on the basis of pregnancy, based on the case law and the nature and purpose of the *Human Rights Act*. This conclusion was relied on by Council Chairman James Edgett in *Davies* v. *Century Oils (Canada) Inc., et al.*

In *McKenzie* v. *Quintette Coal Ltd.*, Council Member Douglas Wilson found the Respondent's policy of denying employment to an insulin-dependent miner because of the perceived risk of injury did not constitute a *bona fide* occupational requirement.

These decisions, as well as some others, are summarized below.

Baker and Hol v. The Winroc Corporation

Prohibited Ground: Sex and Equal Pay (the *Human Rights Code*, now repealed, sections 6 and 8)

Chairman of the Hearing: Natexa Verbrugge

Date of Decision: April 10, 1986

Natexa Verbrugge, Chairman of the Hearing, found that the Winroc Corporation (the "Respondent") discriminated against Sheila Baker and Marni Hol (the "Complainants") on the basis of sex contrary to the *Human Rights Code*, section 8, when it failed to grant them raises in June 1984. However, Ms. Verbrugge also found that the Respondent did not discriminate against the Complainants as claimed in the other allegations of discrimination contrary to sections 8 and 6 of the Code.

Sheila Baker and Marni Hol were employed by the Respondent as data entry clerk and credit manager respectively. Ms. Baker was hired in July 1981 and her employment was terminated in January 1985. Ms. Hol was hired in November 1983 and left her job in January 1985.

Both Complainants testified the Respondent discriminated against them because of their sex on several occasions. Ms. Baker alleged she was discriminated against when she: was paid less than the former (male) credit manager as well as another male doing similar or substantially similar work; was passed over for a promotion; had her hours reduced; and did not receive a wage increase concurrent with male employees.

Ms. Verbrugge stated once a Complainant has established a *prima facie* case of discrimination, the Respondent is presumed to have contravened the law if he remains silent. Following the Supreme Court of Canada decisions *Bhinder* v. *C.N.R. Company* and *O'Malley* v. *Simpson-Sears Ltd.*, the Respondent may rebut the presumption of discrimination either by proving on a balance of probabilities that the conduct complained of falls within an exemption contained in the relevant statute, or by producing evidence that sufficient steps were taken to reasonably accommodate the Complainant short of undue hardship.

Ms. Verbrugge found that, with respect to all but one of the allegations, the Complainant failed to establish a *prima facie* case of discrimination as defined by the relevant sections of the *Human Rights Code*. However, the allegation that the Complainants did not receive pay increases concurrent with male employees was supported by the evidence and found to be contrary to section 8 of the *Human Rights Code*.

In making the decision, Ms. Verbrugge noted the wage increase — which occurred during a fiscal restraint period — was made on the assumption that the men in the office required a raise to retain them as employees whereas the women did not. Ms. Verbrugge found this assumption to constitute a subtle undercurrent of sex discrimination. Even though there was no intention by the Respondent to discriminate against its female employees, the effect of this selective wage increase decision was discriminatory.

Ms. Verbrugge ordered the Respondent to:

— cease discriminating against its female employees;

— pay to each of the Complainants a sum equal to 3.5% of their gross earnings from the date on which raises were given to male employees in June 1984 to their respective dates of termination of employment; and

— pay to each of the Complainants $1,000 for injured feelings and loss of self respect.

Lindahl v. Auld Phillips Ltd.

Prohibited Ground: Physical Disability (the *Human Rights Code*, now repealed, section 8)

Chairman of the Hearing: Douglas J. Wilson

Date of Decision: April 14, 1986

Douglas J. Wilson, Chairman of the Hearing, found that Auld Phillips Ltd. (the "Respondent") discriminated against Debbie Lindahl (the "Complainant") without reasonable cause contrary to the *Human Rights Code*, section 8, when it denied her employment because of a physical disability.

The Complainant was born with a cleft lip and a cleft hard and soft palate. Some corrective surgery has been successful, but she has a partial plate which blocks the hard palate and prevents air from escaping through the hard palate.

In January 1982, the Complainant answered an advertisement for a retail sales manager position with the Respondent. She testified that she was interviewed twice for the position. The first interview was by the Respondent's general manager and secretary, Irma Burgermeister, who expressed no concern about the Complainant's speech or physical appearance. However, in the second interview with the Respondent's controlling shareholder, Rodrique Alfred Cooper, the Complainant testified she was repeatedly questioned about her disability and how she coped with it. She was upset by these questions and Mr. Cooper's comments about people with cleft palates. Mr. Cooper called her later to tell her another candidate with better retail experience had been hired. No tests were given to assess her speech or people's ability to understand her.

The Complainant was distressed and subsequently found it difficult to seek employment. She sought psychiatric help for agoraphobia. In June 1983, she was hired by a Langley fabrics firm as a retail sales clerk and claimed to have had no difficulty dealing with customers at that job. Since December 1983, she has been a self-employed hog farmer in the Fraser Valley.

The Respondent's case was based almost entirely on Irma Burgermeister's testimony. Mr. Cooper admitted that, except for the notes on the Complainant's resume and what Mrs. Burgermeister had told him, he did not have an independent recollection of the Complainant, the successful candidate, or either of the interviews. Neither Mr. Cooper nor Mrs. Burgermeister could recall making remarks on the Complainant's disability. Mr. Wilson accepted the Complainant's testimony in this regard.

Counsel for the Respondent argued that, even if one accepted the Complainant's testimony, Mr. Cooper's questions were reasonable and related to *bona fide* occupational qualification. Mr Wilson rejected this submission and found there was no proof of a reasonable inquiry or assessment of the Complainant's capabilities to do the essential components of the job and, therefore, there was no reasonable cause to justify the discrimination.

Mr. Wilson ordered the Respondent to:

— cease the contravention and refrain from committing the same or similar contraventions; and

— pay the Complainant $2,000.

Harker on behalf of Gosal v. Popular Roost Resort Ltd.

Prohibited Ground: Race and Place of Origin (the *Human Rights Code*, now repealed, sections 4 and 15)

Chairman of the Hearing: John I. D. Joe

Date of Decision: May 2, 1986

John Joe, Chairman of the Hearing, found that the Popular Roost Resort Ltd. (the "Respondent") denied Mohinder Singh Gosal an opportunity to acquire an interest in land because of his race or place of origin contrary to section 4 of the *Human Rights Code*. The complaint was filed by Byron Harker on behalf of Mr. Gosal.

The Respondent owned about five acres of land near Shuswap Lake, B.C. which were divided into numbered lots. The owner of a share had the exclusive right to occupy the respective lot.

James Harker, Byron Harker's father, and Mr. Gosal reached an agreement whereby the former would transfer his lot to Mr. Gosal at an agreed price. However, the directors of the Respondent did not consent to the share transfer and the sale and purchase was not completed.

Over one year later, James Harker transferred the same lot and share to another person with the consent of the Respondent's directors.

Mr. Joe, Chairman of the Hearing, found that the transaction in question was covered under section 4 of the *Human Rights Code*. Mr. Joe also found that the Respondent, through the acts of the directors, denied Mr. Gosal an opportunity to acquire the lot. Individual directors allegedly made derogatory comments about Mr. Gosal's race and place of origin and since the Respondent provided no evidence to deny or explain the allegations, Byron Harker's testimony was not disputed.

Mr. Joe ordered the Respondent to:

— cease the contravention and refrain from committing the same or a similar contravention; and

— pay Mr. Gosal, as the person discriminated against, $750 as compensation and as a symbol that society does not condone or countenance the discriminatory conduct.

Timms v. Port Moody Senior Housing Society

Prohibited Ground: Mental Disability (the *Human Rights Act*, section 5)

Chairman of the Hearing: Natexa Verbrugge

Date of Decision: June 20, 1986

Natexa Verbrugge, Chairman of the Hearing, dismissed Sidney Timms' complaint that the Port Moody Senior Housing Society discriminated against him because of his mental disability when they rejected his tenancy application.

Toward the end of 1983, Mr. Timms applied for accommodation at a government subsidized rental housing complex in Port Moody, run by the Port Moody Senior Housing Society. In December 1984, he informed the Society that his mental health had deteriorated severely and he was now classified by the Ministry of Human Resources as a mentally handicapped person. In the physician's report sent to the Society, it was stated Mr. Timms required some supervision of expenditures to manage daily life.

Although Mr. Timms met the Society's stated criteria for admission — age, income and ability to get along with other residents — his application was rejected because the complex was only suitable for persons not requiring supervision. Ms. Verbrugge said it was reasonable for the Society to conclude on the basis of the only information before it that Mr. Timms required supervision which the Society was not able to provide. Although the complaint was dismissed, Ms. Verbrugge recommended Mr. Timms resubmit an application with a recent letter from the Ministry of Human Resources which stated that he was able to care for his own affairs without supervision.

Ratnam v. Capital Construction Supplies Ltd.

Prohibited Ground: Race, Colour and Place of Origin (the *Human Rights, Code* now repealed, section 5)

Chairman of the Hearing: Eric D. Powell

Date of Decision: July 10, 1986

Eric Powell, Chairman of the Hearing, found that Capital Construction Supplies Ltd. discriminated against Mr. Shiu Ratnam by denying him available tenancy accommodation because of his race, colour or place of origin.

Mr. Ratnam, who is from Fiji, moved with his wife and two children into a one bedroom apartment at the Lindsay Garden Apartments in Richmond in March 1978. At that time he told the manager he preferred to rent a two or three bedroom apartment and was told he could move into a larger apartment when one became available. During 1979 he saw a number of apartments unoccupied but was told by the new manager, Mrs. Dianne Gales, they were being repaired and painted and were thus unavailable for occupancy. The apartments were subsequently rented to other persons.

Mr. Ratnam believed he was denied occupancy of a larger apartment because he is of Fijian origin. He testified Mrs. Gales told him she was not "going to give any rooms to black people or to Fijian people." Mr. Ratnam produced other evidence to prove the denial was because of racial discrimination and described his efforts to obtain a bigger apartment.

Mr. Powell noted that Mrs. Gales had a number of excuses for denying Mr. Ratnam a larger apartment, but found, based on the evidence given by a number of witnesses, that she continuously discriminated against him because of his race, colour or place of origin. The company was ordered to cease the contravention and refrain from committing the same or similar contravention and ordered to pay Mr. Ratnam $2,000 for the humiliation, embarrassment and injury to self-respect which he suffered.

Stefanyshyn v. 4 Seasons Management Ltd.

Prohibited Ground: Sex (pregnancy) and Marital Status (the *Human Rights Act*, section 8)

Chairman of the Hearing: John I. D. Joe

Date of Decision: November 10, 1986

John Joe, Chairman of the Hearing, found that 4 Seasons Management Ltd. carrying on business as 4 Seasons Racquet Club discriminated against Carol Stefanyshyn by refusing to continue to employ her because of her sex (pregnancy). The complaint based upon marital status was found to be unjustified.

Ms. Stefanyshyn was employed by the company as a cocktail server/bartender in the racquet club lounge, but was fired when she became pregnant.

In deciding whether this action contravened the Act, three questions were considered: (1) Does the prohibition against sex discrimination include pregnancy? (2) Was Ms. Stefanyshyn's pregnancy a significant factor in her termination? and (3) In the circumstances of this case is not being pregnant a *bona fide* occupational requirement for work as a cocktail server/bartender?

Based on case law and the nature and purpose of the *Human Rights Act*, Mr. Joe concluded that discrimination because of pregnancy is prohibited and that pregnancy was a factor in Ms. Stefanyshyn's firing.

Ms. Stefanyshyn testified that the lounge manager informed her that she was being fired because she was single and pregnant and thus did not present the proper image for the racquet club. Moreover, the evidence indicated that there was a sense of immediacy to the job termination as her pregnancy was beginning to show.

The company argued it was not sensible for a cocktail server/ bartender to work while she is pregnant because: (1) the work could be hazardous or dangerous; (2) the smoke in the air made it unhealthy for a pregnant woman; and (3) the late hours were unsuitable for an expectant mother. However, Mr. Joe, the Chairman of the Hearing, found that these considerations were not related in an objective sense to Ms. Stefanyshyn's job so as to justify her firing. The company acknowledged that she was a competent employee and additional evidence showed that she continued to adequately perform similar duties for a number of months after her termination.

Mr. Joe ordered the company to cease the contravention and to pay Ms. Stefanyshyn $950 as some compensation for the loss of income she suffered as a result of the discriminatory action.

Joss and Glover v. T & C Gelati Ltd.

Prohibited Ground: Sex (sexual harassment) (the *Human Rights Act*, section 8)

Chairman of the Hearing: James R. Edgett

Date of Decision: November 12, 1986

James Edgett, Chairman of the Hearing, found that T & C Gelati Ltd. operating as Mario's Gelati Italian Ice Cream discriminated against Carrie Joss because of her sex (sexual harassment). The complaint of Christine Glover (formerly Doorenbos) was dismissed for lack of evidence.

Ms. Joss was employed by the Vancouver company in the spring of 1984. She alleged that in June, the company's owner, Tony Pisani, began to hug, pat and touch her at least three or four times each eight-hour shift. She told him that his behaviour was not welcome and he, in response, told Ms. Joss if she did not like it or put up with it she could lose her job.

Ms. Joss felt ashamed and embarrassed at what was happening, but continued to work as she needed the money and she thought she could tolerate Mr. Pisani's behaviour and that he would stop.

She alleged that a male friend of Mr. Pisani's would, on occasion, make lewd remarks to her while she was working and rub his genitals against her back while she was on the telephone taking customers' orders. Ms. Joss complained to Mr. Pisani about these incidents. The last time such an incident happened she told him clearly to stop it. He grabbed her wrists and shook her. Ms. Joss testified that Mr. Pisani later admitted to her that he and his friend had both gone too far. Two weeks after this incident Ms. Joss was terminated.

The company, through its counsel, gave notification that it would not appear at the hearing and did not do so. Thus the evidence presented by Ms. Joss was uncontradicted.

Mr. Edgett, Chairman of the Hearing, concluded that Ms. Joss was subjected to unsolicited physical contact, gender based insults and taunting, and sexual intimidation, all of which created a negative psychological and emotional work environment. The company was ordered to:

— cease the contravention and refrain from committing the same or similar contravention;

— pay Carrie Joss $2,380 as compensation for wages lost by her as a result of the contravention; and

— pay Carrie Joss $2,000 for the indignities suffered and the humiliation, embarrassment and injury to feelings of self-respect caused by its conduct.

McKenzie v. Quintette Coal Limited

Prohibited Ground: Reasonable cause (medical condition — Diabetes), (the *Human Rights Code*, now repealed, section 8)

Chairman of the Hearing: Douglas J. Wilson

Date of Decision: November 25, 1986

Douglas Wilson, Chairman of the Hearing, found that Quintette Coal Limited discriminated against Kevin McKenzie by refusing to hire him without reasonable cause (medical condition — diabetes).

Mr. McKenzie applied for a job with Quintette Coal's Tumbler Ridge open-pit mine. He was interviewed for a position with the powder crew, but was rejected after a medical exam because he was an insulin-dependent diabetic. The company's policy was to refuse to hire miners who were insulin-dependent diabetics.

Counsel for both parties introduced expert medical witnesses who testified as to whether Mr. McKenzie's diabetes affected his abilities to work as a "mine operator."

Dr. John D. Gossage, testifying on Mr. McKenzie's behalf, maintained that diabetics live and work in conditions as extreme as those in Tumbler Ridge. He emphasized that a well-controlled Type I diabetic such as Mr. McKenzie was suitable for employment regardless of working conditions.

The company gave extensive testimony on the mine site working conditions describing open pit mining as one of the most dangerous occupations because of the extremely cold temperatures (to minus 55 degrees Celsius), driving hazards for operators of equipment the size of large houses, long shifts and dusty conditions. All of these factors created a number of hazards for employees.

The company testified that Mr. McKenzie was assessed on an individual basis and it was after a review of all relevant factors that they decided not to hire him. The company's concern centred on two safety issues: the safety of other employees and Mr. McKenzie's own safety.

Counsel for Mr. McKenzie argued Quintette Coal's decision was not based on Mr. McKenzie's abilities, but on presumptions about his diabetic condition and the company was only speculating that he could not function within the mine environment.

Mr. Wilson, Chairman of the Hearing, found that to deny Mr. McKenzie the job solely because there may be some increased risk to himself and others was to give him a serious disadvantage in obtaining employment. He found, on the evidence, that hiring Mr. McKenzie would not create any greater risk let alone a "significant" risk to Mr. McKenzie or other employees.

In addition, Mr. Wilson noted that some risk of injury exists in all jobs and to deny a disabled person an opportunity solely because of a perceived risk to that individual defeated the purpose of the legislation.

Mr. Wilson referred the matter back to counsel for remedy and the parties subsequently reached an agreement.

Ridlon v. Tanro Holdings Ltd.

Prohibited Ground: Age (the *Human Rights Act*, section 8)

Chairman of the Hearing: John I. D. Joe

Date of Decision: January 22, 1987

John Joe, Chairman of the Hearing, found that Tanro Holdings Ltd. discriminated against Lydia Ridlon by refusing to employ her because of her age.

In November 1985, Ms. Ridlon applied for an advertised position as a counter-clerk in the company's store, "Frost's," in Victoria. During her interview, the manager, Rebecca Tanner, told Ms. Ridlon that she was "looking for someone younger." The successful applicant for the position was 21 years of age.

Miss Tanner testified that this was her first experience in hiring and the testimony showed that she felt uncomfortable during the interview. She testified that she concluded that Ms. Ridlon would not be suitable for other reasons and so made reference to Ms. Ridlon's age to end the interview. Miss Tanner agreed she used the "wrong words," and did not know "it was against the law."

The company argued that its employment policy was "fair-minded and liberal" and that it had in the past employed persons in Ms. Ridlon's age group.

In deciding this case, Mr. Joe found that although not deliberately or intentionally, Miss Tanner was influenced by the Complainant's age when she rejected the Complainant.

Mr. Joe ordered the company to pay Ms. Ridlon $350 as some compensation for the hurt caused her by the company.

Penner v. Gabriele and Craftsman Shoe Clinic Ltd.

Prohibited Ground: Sex (sexual harassment) (the *Human Rights Act*, section 8)

Chairman of the Hearing: John I. D. Joe

Date of Decision: March 19, 1987

John Joe, Chairman of the Hearing, found that Carlo Gabriele and Craftsman Shoe Clinic Ltd. discriminated against Barbara Penner because of her sex (sexual harassment).

Penner was hired by the shoe repair business in August 1983, to perform a number of tasks including patching work, general clean up, front counter duties and deliveries.

Penner alleged that while she was working Gabriele would touch and poke her arms, legs and breasts, ask rude and offensive questions, place her paycheque inside the front of her blouse or in her back pocket and press up against her.

Penner attempted to avoid contact with Gabriele and told him to "stop touching me like that." None of her protests were effective and over time Penner began to view herself as "awful," "dirty" and "filthy." She quit on January 21, 1985, because she felt like a "caged animal," and could not handle Gabriele's conduct any longer.

Gabriele admitted that he frequently touched Penner, but denied that any of his conduct constituted sexual harassment. For example, he sometimes grabbed her by the hands and said "come on, you beautiful girl, let's go for coffee." He recalled receiving "dirty looks" from Penner, and was once told not to touch her, but he felt she was "too jumpy."

Mr. Joe, in deciding this case, noted that normal social discussions or relationships do not constitute sexual harassment. Rather, the focus of the prohibition is the unfair and unequal utilization of eonomic power or authority so as to block or interfere with an employee's free and equal access to the workplace.

Mr. Joe dismissed arguments that Penner should have complained or quit her job sooner if she was being harassed and stated that by virtue of the *Human Rights Act* an employee has the right to a workplace free of discriminatory treatment based upon his or her gender. The full enjoyment of this right cannot be obtained if, in pursuing that right, an employee is required to give up his or her position in the workplace.

Mr. Joe accepted the Complainant's testimony as more "in harmory with the preponderance of probability" and found that the incidents described constituted sexual harassment.

The company was ordered to:

— cease the contravention and refrain from committing the same or similar contravention; and

— pay Penner $2,000 as some compensation for the hurt generated by the discrimination.

APPENDIX A

SUMMARY OF ACTIVITY

April 1, 1986 - March 31, 1987

The following tables detail the nature of complaints received, the level of intake activity, the disposition of complaints prior to investigations under section 13 of the ***Human Rights Act*** and dispositions of complaints following investigations. In addition, the number of complaints by region of the province is included.

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Table 1	Intake Activities — April 1, 1986 to March 31, 1987.
Table 2	Disposition under Section 13 (1) — April 1, 1986 to March 31, 1987.
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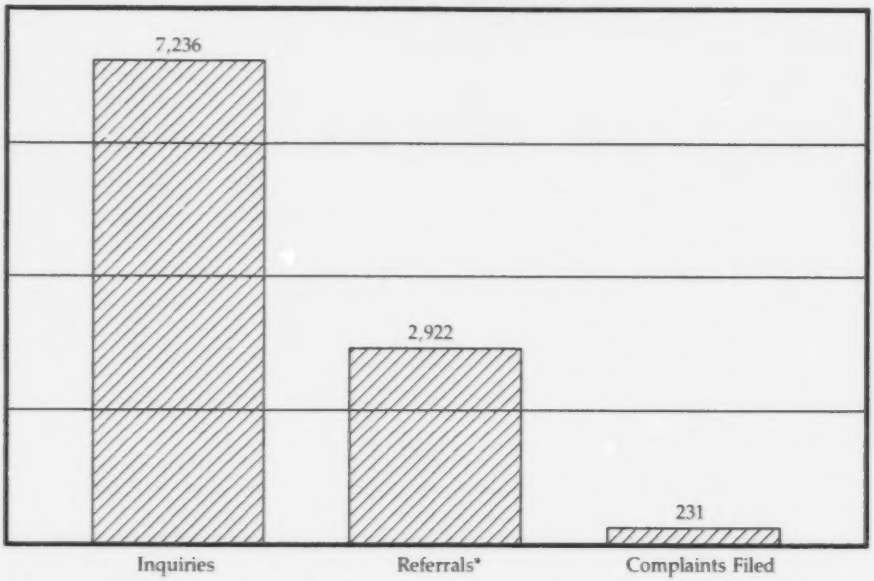
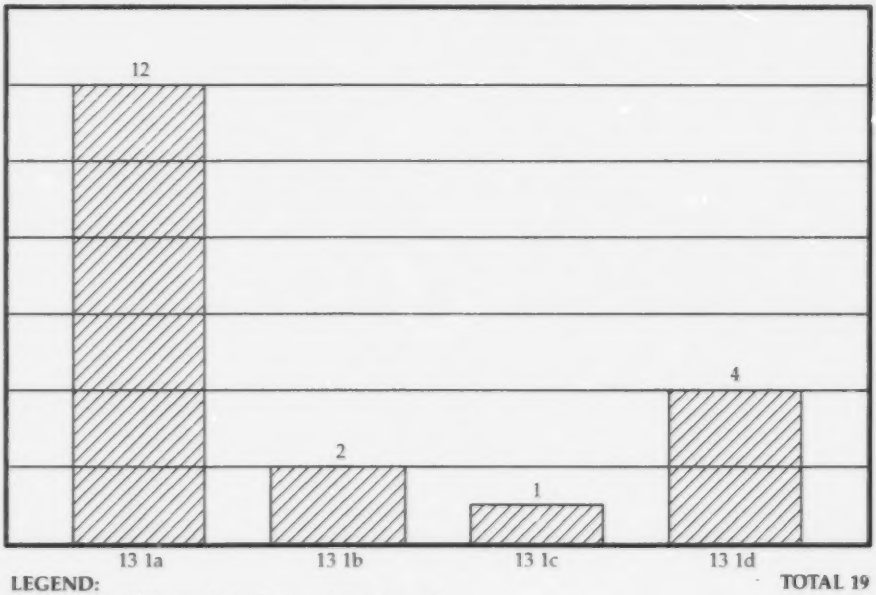
Table 5	Complaints by Prohibited Grounds — April 1, 1986 to March 31, 1987.
Table 6	Complaints by Section of the Act — April 1, 1986 to March 31, 1987.
Table 7	Number of Complaints by Region — April 1, 1986 to March 31, 1987.

Table 1
INTAKE ACTIVITIES
April 1, 1986 to March 31, 1987



* Referrals are persons seeking assistance who are referred to another agency which can best assist them

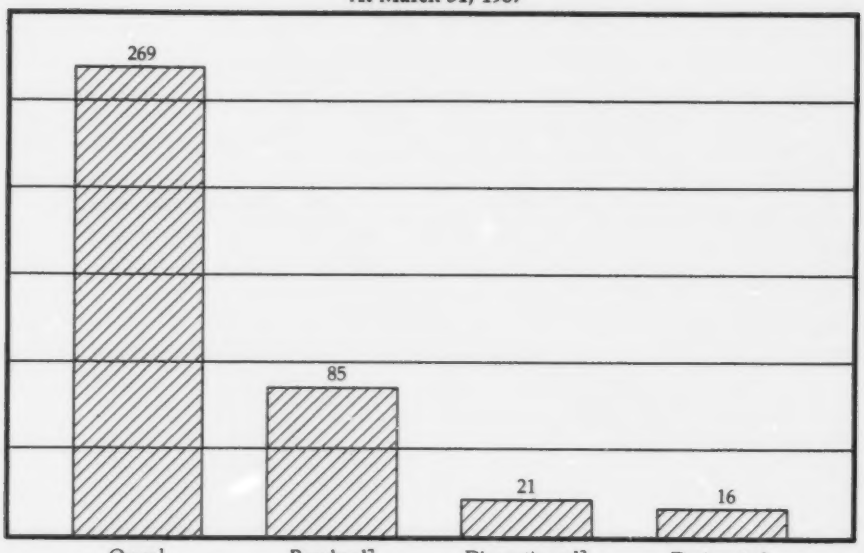
Table 2
DISPOSITION UNDER SECTION 13(1)
April 1, 1986 to March 31, 1987



LEGEND: **TOTAL 19**

13 1a Not within the jurisdiction of the Council
13 1b More appropriately dealt with under another Act
13 1c Is trivial, frivolous, vexatious or made in bad faith
13 1d Based on facts that occurred more than six months before complaint was filed

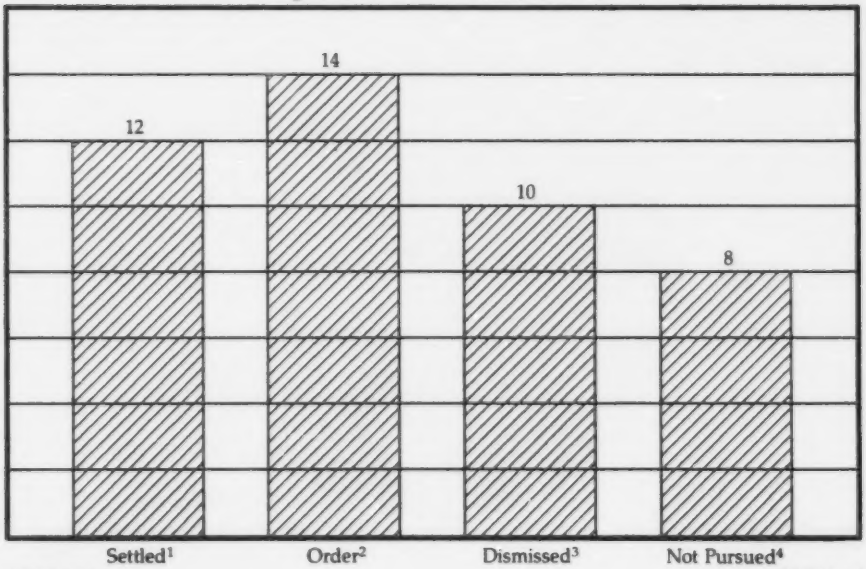
Table 3
STATUS OF COMPLAINTS
At March 31, 1987



LEGEND:
1. Open includes files under investigation and active hearing files
2. Resolved includes complaints that are settled, withdrawn or not pursued
3. Further proceedings not warranted
4. Total includes complaints carried forward from the previous reporting period

TOTAL 391[4]

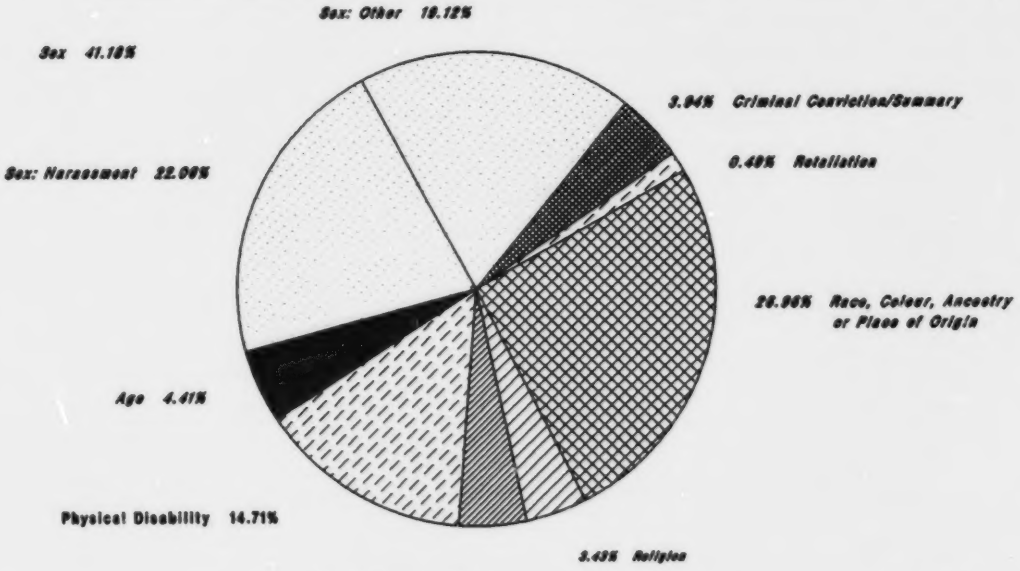
Table 4
DISPOSITION OF COMPLAINTS DESIGNATED TO HEARINGS
April 1, 1986 to March 31, 1987



LEGEND:
1. Parties settled before or during hearing
2. Complaint justified, Order made in favour of Complainant
3. Complaint not justified
4. Complainant did not wish to pursue the complaint

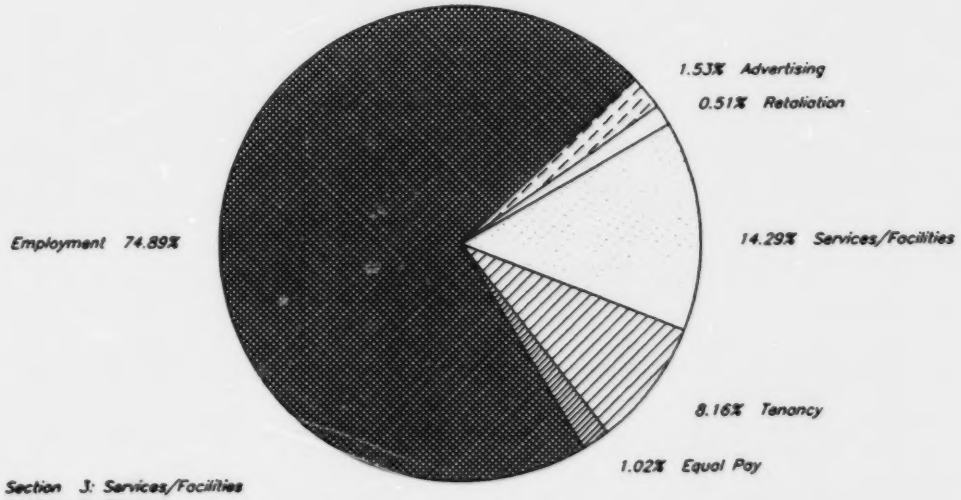
TOTAL 44

Table 5
COMPLAINTS BY PROHIBITED GROUNDS
April 1, 1986 to March 31, 1987



TOTAL 231

Table 6
COMPLAINTS BY SECTION OF THE ACT
April 1, 1986 to March 31, 1987



Section 3: Services/Facilities
Section 5: Tenancy
Section 6: Advertising
Section 7: Equal Pay
Section 8: Employment
Section 20: Retaliation

TOTAL 231

Table 7
NUMBER OF COMPLAINTS BY REGION
April 1, 1986–March 31, 1987

REGION NUMBER	NAME OF REGION	NUMBER OF COMPLAINTS	PERCENT
01	Alberni-Clayoquot	1	0.43
02	Bulkley-Nechako	1	0.43
03	Victoria Area	35	15.15
04	Cariboo	3	1.30
05*	Fraser Valley	1	0.43
06	Central Kootenay	2	0.87
07	Central Okanagan	5	2.16
09	Comox-Strathcona	4	1.73
10	Cowichan Valley	5	2.16
11	Dewdney-Alouette	1	0.43
12	East Kootenay	5	2.16
14	Fraser-Ft. George (Pr. George)	9	3.90
15*	Greater Vancouver	136	58.78
17	Kootenay Boundary (Trail)	1	0.43
18	Mount Waddington (Port McNeill Alert Bay, Port Hardy)	3	1.30
19	Nanaimo Area	1	0.43
20	North Okanagan	4	1.73
22	Okanagan/Similkameen	3	1.30
23	Peace River-Liard	1	0.43
24	Powell River area	1	0.43
29	Thompson-Nicola (Kamloops)	9	3.90
	TOTAL	**231**	

* Intakes handled by Vancouver Office
Remainder through Victoria

APPENDIX B
HUMAN RIGHTS ACT

HUMAN RIGHTS ACT

CHAPTER 22

[Consolidated September 6, 1985.]

[Act administered by the Ministry of Labour]

Assented to May 16, 1984.

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Interpretation

1. In this Act

"age" means an age of 45 years or more and less than 65 years;*

"council" means the British Columbia Council of Human Rights;

"employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;

"employment" includes the relationship of master and servant, master and apprentice and principal and agent, if a substantial part of the agent's services relate to the affairs of one principal, and "employ" has a corresponding meaning;

"employment agency" includes a person who undertakes, with or without compensation, to procure employees for employers or to procure employment for persons;

"occupational association" means an organization, other than a trade union or employers' organization, in which membership is a prerequisite to carrying on a trade, occupation or profession;

"person" includes an employer, an employment agency, an employers' organization, an occupational association and a trade union;
"trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers.

1984-22-1.

PART 1

DISCRIMINATORY PRACTICES PROHIBITED

Discriminatory publication

2. (1) No person shall publish or display before the public, or cause to be published or displayed before the public, a notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against a person or class of persons in any manner prohibited by this Act.

(2) Notwithstanding subsection (1) but subject to the *Civil Rights Protection Act*, a person may, by speech or in writing, freely express his opinions on a subject.

1984-22-2.

Discrimination in public facilities

3. No person shall

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or

(b) discriminate against a person or class of persons with respect to any accommodation, service or facility customarily available to the public,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons unless the discrimination relates, in the case of sex, to the maintenance of public decency or, in the case of sex or physical or mental disability, to the determination of premiums or benefits under contracts of life or health insurance.

1984-22-3.

Discrimination in purchase of property

4. No person shall

(a) deny to a person or class of persons the opportunity to purchase a commercial unit or dwelling unit that is in any way represented as being available for sale,

(b) deny to a person or class of persons the opportunity to acquire land or an interest in land, or

(c) discriminate against a person or class of persons with respect to a term or condition of the purchase or other acquisition of a commercial unit, dwelling unit, land or interest in land,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons.

1984-22-4.

Discrimination in tenancy premises

5. (1) No person shall

(a) deny to a person or class of persons the right to occupy, as a tenant, space that is in any way represented as being available for occupancy by a tenant, or

(b) discriminate against a person or class of persons with respect to a term or condition of the tenancy of the space,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons, or of any other person or class of persons.

(2) Subsection (1) does not apply where a person in any way represents that space is available for occupancy by another person who is to share with him the use of any sleeping, bathroom or cooking facilities in the space.

1984-22-5.

Discrimination in employment advertisements

6. No person shall publish or cause to be published an advertisement in connection with employment or prospective employment that expresses a limitation, specification or preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age unless the limitation, specification or preference is based on a bona fide occupational requirement.

1984-22-6.

Discrimination in wages

7. (1) No employer shall discriminate between his male or female employees by employing an employee of one sex for work at a rate of pay that is less than the rate of pay at which an employee of the other sex is employed by that employer for similar or substantially similar work.

(2) For the purposes of subsection (1), the concept of skill, effort and responsibility shall, subject to such factors in respect of pay rates as seniority systems, merit systems and systems that measure earnings by quantity or quality of production, be used to determine what is similar or substantially similar work.

(3) A difference in the rate of pay between employees of different sexes based on a factor other than sex does not constitute a failure to comply with this section where the factor on which the difference is based would reasonably justify the difference.

(4) No employer shall reduce the rate of pay of an employee in order to comply with this section.

(5) Where an employee is paid less than the rate of pay to which he is entitled under this section, he is entitled to recover from his employer, by action, the difference between the amount paid and the amount to which he is entitled, together with the costs, but

(a) no action shall be commenced later than 12 months from the termination of his services, and

(b) the action applies only to wages of an employee during the 12 month period immediately preceding the date of the termination of his services, or the date of the commencement of his action, whichever date occurs first.

1984-22-7.

Discrimination in employment

8. (1) No person or anyone acting on his behalf shall

(a) refuse to employ or refuse to continue to employ a person, or

(b) discriminate against a person with respect to employment or any term or condition of employment,

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age of that person or because of his conviction for a criminal or summary conviction charge that is unrelated to the employment or to the intended employment of that person.

(2) No employment agency shall refuse to refer a person for employment for any reason mentioned in subsection (1).

(3) Subsection (1) does not apply

(a) as it relates to age, to any bona fide scheme based on seniority, or

(b) as it relates to marital status, physical or mental disability, sex or age, to the operation of any bona fide retirement, superannuation or pension plan or to a bona fide group or employee insurance plan.

(4) Subsections (1) and (2) do not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

1984-22-8.

Discrimination by unions and associations

9. No trade union, employers' organization or occupational association shall

(a) exclude any person from membership,

(b) expel or suspend any member, or

(c) discriminate against any person or member

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age of that person or member, or because of his conviction for a criminal or summary conviction charge that is unrelated to the employment or to the intended employment of that person.

1984-22-9.

PART 2

COUNCIL OF HUMAN RIGHTS

Council established

10. (1) There shall be established a council known as the British Columbia Council of Human Rights consisting of not more than 5 members appointed by the Lieutenant Governor in Council to hold office during pleasure.

(2) The Lieutenant Governor in Council shall designate a member of the council as chairman.

(3) Each member of the council shall be paid the actual and reasonable expenses incurred by him in discharging his duties as a member of the council, and a member who is not an employee under the *Public Service Act* shall be paid remuneration for his services as a member of the council as the Lieutenant Governor in Council orders.

1984-22-10.

Complaints

11. (1) A person who alleges that he has been discriminated against contrary to this Act may file a complaint with particulars with the council.

(2) Where the council is satisfied that a person alleged to have been discriminated against contrary to this Act consents to the filing of a complaint and, in the opinion of the council, it is in the interests of that person that the complaint be filed, the council may accept a complaint filed on his behalf by another person.

(3) Where a complaint is filed under subsection (2), the person on whose behalf the complaint is filed shall, for the purposes of sections 12 to 16, be considered to be the complainant.

(4) Subject to section 13, the council shall investigate a complaint.

1984-22-11.

Inspection of records

12. For the purposes of conducting an investigation, the council may make an examination and inquiry that it considers necessary to ascertain whether this Act has been complied with and may

(a) require a complainant or a person who is alleged to have contravened this Act to disclose, orally or in writing, information the council requires respecting the subject matter of the complaint, and

(b) require the production of records relating to the subject matter of the complaint.

1984-22-12.

Decision not to proceed with investigation

13. (1) The council may decide not to proceed with the investigation of a complaint where it appears to the council that the complaint

(a) is not within the jurisdiction of the council,

(b) could be more appropriately dealt with under another Act,

(c) is trivial, frivolous, vexatious or made in bad faith, or

(d) is based on facts that occurred more than 6 months before the complaint was filed, unless the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

(2) The council shall not decline to proceed with an investigation by reason only that there was no intent by the person against whom the complaint was made to contravene this Act.

(3) Where the council decides not to proceed with an investigation, it shall so inform the complainant in writing.

1984-22-13.

Procedure after investigation

14. (1) On completion of an investigation, the council shall

(a) order that the proceedings be discontinued,

(b) recommend a settlement of the complaint and, where the recommendation is not accepted by the complainant or the person alleged to have contravened this Act, submit a report to the minister,

(c) submit a report to the minister, or

(d) designate one member of the council to receive, as specified by him, written or oral submissions from the complainant and the person alleged to have contravened this Act, and the member of council

(i) where he considers the complaint is not justified, shall dismiss the complaint, or

(ii) where he considers the complaint is justified, shall make an order described in section 17 (2) (a) and may make an order described in section 17 (2) (b).

(2) Section 16 (4) and (5) applies where oral submissions are made under subsection (1) (d) of this section.

(2.1) A member of the council who is designated under subsection (1) (d) has, for the purposes of that subsection,

(a) the privileges and protection of section 12 of the *Inquiry Act*, and

(b) where oral submissions are made under subsection (1) (d), the power of sections 15 and 16 of the *Inquiry Act*

given to a commissioner appointed under Part 2 of that Act.

(3) On receipt of a report under subsection (1) (b) or (c), the minister shall

(a) refer the complaint to a board of inquiry, or

(b) order that the proceedings be discontinued.

1984-22-14; 1985-51-32, effective July 19, 1985 (B.C. Reg. 232/85).

Decision to be communicated in writing

15. An order under section 14 (1) (a) or (d) (ii) or section 14 (3) or the dismissal of a complaint under section 14 (1) (d) (i) shall be communicated in writing to the complainant and the person who is alleged to have contravened this Act, and, where the proceedings are discontinued or the complaint is dismissed, no further proceedings under this Act shall be taken in relation to the subject matter of the discontinued proceedings or the dismissed complaint.

1984-22-15.

PART 3

BOARD OF INQUIRY

Board of inquiry

16. (1) A board of inquiry shall consist of one person appointed by the minister.

(2) A board of inquiry has, for the purposes of a reference under section 14 (3), the power, privileges and protection of sections 12, 15 and 16 of the *Inquiry Act* given to a commissioner appointed under Part 2 of that Act.

(3) The persons who are entitled to be parties to proceedings before a board of inquiry are

(a) the complainant,

(b) where the complaint was filed under section 11 (2), the person who filed the complaint on behalf of the complainant,

(c) the person who is alleged to have contravened this Act, and

(d) any other person whom the board of inquiry considers would be directly affected by an order made by it.

(4) A board of inquiry shall give the parties the opportunity to be represented by counsel, to present relevant evidence, to cross examine witnesses and to make submissions.

(5) A board of inquiry may receive and accept on oath, affidavit or otherwise, evidence or information that it, in its discretion, considers necessary and appropriate, whether or not the evidence or information would be admissible in a court of law.

(6) Where a party to a matter before a board of inquiry complains to the minister that the board has failed to proceed expeditiously, the minister may, after consulting the parties and the board, issue an order he considers necessary to ensure the matter will be disposed of without further undue delay.

1984-22-16.

Disposition of complaints

17. (1) Where a board of inquiry considers that a complaint is not justified, it shall dismiss the complaint.

(2) Where a board of inquiry considers that a complaint is justified, it

(a) shall order the person who contravened this Act to cease the contravention and to refrain from committing the same or a similar contravention, and

(b) may order the person who contravened this Act to

(i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the board, he was denied contrary to this Act, and

(ii) compensate the person discriminated against for all, or a part the board determines, of any wages or salary lost, or expenses incurred, by the contravention,

and, in addition to or instead of any other order under this paragraph, may order the person who contravened this Act to pay to the person discriminated against an amount not exceeding $2 000.

(3) A board of inquiry may make an order as to costs it considers appropriate.

(4) Where an order is made under subsection (2) or (3) or section 14 (1) (d) (ii), the council or the person who was discriminated against and in whose favour the order is made may file a certified copy of the order with the Supreme Court or with a County Court, and on being filed the order has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of that court.

1984-22-17.

PART 4

GENERAL

Disclosure

18. (1) A member of the council or any person employed in the administration of this Act shall not be required in any proceedings or otherwise, except before a board of inquiry or in a judicial review respecting a complaint under this Act,

(a) to give evidence, or

(b) to produce records

relating to information obtained or a communication received in the investigation of a complaint under this Act.

(2) The minister shall not be compelled to give evidence in any proceedings or otherwise respecting any matter, communication or information connected with the administration or operation of this Act, or otherwise coming to his knowledge under or by reason of this Act.

1984-22-18.

Exemptions

19. (1) Where a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or group shall not be considered as contravening this Act because it is granting a preference to members of the identifiable group or class of persons.

(2) The council may approve any program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, and any approved program or activity shall be deemed not to be in contravention of this Act.

1984-22-19.

Protection

20. No person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

1984-22-20.

Style of cause for proceedings

21. (1) A proceeding under this Act in respect of a trade union, employers' organization or occupational association may be taken in its name.

(2) An act or thing done or omitted by an employee, officer, director, official or agent of any person within the scope of his authority shall be deemed to be an act or thing done or omitted by that person.

1984-22-21.

Technical and other matters

22. (1) No proceeding under this Act is invalid by reason of any defect in form or any technical irregularity.

(2) Where there is a conflict between a provision of this Act and a provision of another enactment, this Act prevails.

1984-22-22.

Offence Act

23. Section 5 of the *Offence Act* does not apply in respect of this Act or the regulations.

1984-22-23.

Regulations

24. The Lieutenant Governor in Council may make regulations.

1984-22-24.

25. [Spent. 1984-22-25.]

26. [Spent. 1984-22-26.]

Transitional

27. (1) Where, before this Act came into force, an allegation was referred by the minister to a board of inquiry under section 16 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, and the board of inquiry has not, on the day this Act came into force, disposed of the allegation, the board of inquiry shall continue to have the same power to inquire into, to make orders in respect of and to dispose of the allegation as it had before this Act came into force, and in relation to that allegation or an allegation referred to in subsection (2) of this section, sections 13, 17, 18, 21 and 24 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, shall, notwithstanding the repeal of that Act, remain in force.

(2) Where before this Act came into force an allegation was made orally or in writing to the director and there is no evidence that the allegation was received by the director under section 15 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, within 6 months after the date of the alleged contravention, the board of inquiry to which the allegation was referred by the minister has, notwithstanding section 23 of that Act or any decision of a court to the contrary, the same power to inquire into, to make orders in respect of and to dispose of the allegation as it would have had before this Act came into force had the allegation been received within 6 months after the date of the alleged contravention.

(3) Nothing in this Act affects an order made before this section came into force by a board of inquiry under section 17 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, and notwithstanding the repeal of that Act, section 24 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, shall remain in force in relation to that order.

1984-22-27.

Commencement

28. This Act comes into force by regulation of the Lieutenant Governor in Council.

1984-22-28.

[Note: Section 10 effective July 20, 1984, B.C. Reg. 231/84, Part II Gazette Vol. 27, p. 336. Sections 1 to 9 and 11 to 27 effective September 14, 1984, B.C. Reg. 282/84, Part II Gazette Vol. 27, p. 456.]

This Legislation is a convenience copy only, not a government verified version. It may not be accurate or up to date.

* In January 1988, the British Columbia Court of Appeal in *Connell and Harrison* v. *U.B.C.* found that the definition of age in the *Human Rights Act* is of "no force and effect."

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Province of
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Ministry of Labour
and Consumer Services
Honourable Lyall Hanson

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